ing a presumption as evidence, nevertheless some courts hold it has a certain amount of probative force. *Barber's Appeal,* 63 Conn. 393; *Bradshaw v. The People,* 153 Ill. 156.

It would seem then, that it would require more evidence, to some degree at least, with the presumption in the case than with the presumption out.

The question of survivorship is one of fact, to be decided in each case by the jury without any rule of presumption; *Robinson v. Gallier,* Fed Cas. No. 11,951; and if the evidence does not establish the survivorship of any one, the law will treat it as a matter incapable of being determined. *Wing v. Angrave,* 8 H. L. Cases 182.

Although, with the exception of Louisana and California, the civil law does not apply in this country, yet evidence as to age, sex, and physical condition of the persons who perished, the nature of the accident and the manner of death may all be taken into consideration by the jury. *Wigmore on Evidence,* Sect. 2532. In the absence of any legal presumption it would seem that the jury may consider any evidence, however slight, in determining whether the parties died together or one survived the other; *Robinson v. Gallier, supra;* and the finding or verdict that one of the persons survived the other may thereby be warranted as a question of fact, though there is no direct or positive evidence upon the question. *Ehle's Will,* 73 Wis. 445; *Stinde v. Ridgway,* 55 How. Pr. (N. Y.) 301.

So it seems that there is a difference whether the law presumes that the parties died together or does not presume anything at all, and therefore the Tennessee court was wrong in assuming that there is no difference even though the effect in this particular case would probably have been the same.

CHANGE OF CONTRACT OF INSURANCE BY AMENDMENT OF BY-LAWS OF A FRATERNAL MUTUAL BENEFIT ASSOCIATION.

By its recent decision in the case of *Wright v. The Knights of the Maccabees of the World,* 42 N. Y. Law J. No. 56, the Court of Appeals of New York has further extended a rule of law laid down by it which seems to be peculiar to that state, and unsupported by either the weight of opinion or the better reasoning of other jurisdictions. The history of this case, which has been

before the courts for several years, has been reported in 48 Misc. Rep. 558; 119 App. Div. 914; 122 App. Div. 904; 128 App. Div. 883.

The plaintiff became a member of the above named "Mutual Fraternal Benefit Association" in 1897. In his application for membership he agreed that any laws of the association "now in force or that may hereafter be adopted" should form the basis of the contract and be made a part thereof. The certificate, or policy, issued to the plaintiff, stated that at his death, one assessment on the membership, not exceeding $1,000 would be paid as a benefit to the designated beneficiary. It appears that the laws then in force fixed the assessment of the member at $1.40 per month and provided that he should pay the same rate of assessment thereafter as long as he remained continually in good standing. Seven years later, the laws were amended by increasing the monthly assessment to be paid by the member from $1.40 to $3.00 per month, and provisions were also adopted which decreased his benefits beyond those specifically stated in the certificate issued to him and in the by-laws in force at that time. These related to certain exemptions from payment after reaching the age of seventy years. When the plaintiff refused to pay the increased rate, he was suspended by the defendant order, and the suspension, if lawful, involved the forfeiture of his right to participate in either the benefit fund or in the fraternal privileges of his tent. Claiming that such suspension was in violation of law, he brought action to secure his reinstatement as a member in good standing, the restoration of his certificate of insurance, and an injunction against the defendant restraining it from changing the contract or the laws and assessment thereunder.

Although it was shown that the changes were desirable as a matter of policy for the general welfare of the order and that the increased rates were not excessive, it was held without dissent that the general statement in plaintiff's application did not amount to such a reservation of power in the association as would authorize it subsequently, and against the will of the insured, to amend its by-laws so as to increase the assessment or decrease his benefit beyond the amount specifically stated in his certificate and in the by-laws in force at that time, and that it cannot be held necessary, as a matter of law, for a corporation to violate its contract to preserve its existence.

The courts have widely discussed the subject of amendments to by-laws of associations and they have differed in the various jurisdictions as to the extent that contracts with members may be affected by amendments. It is generally agreed that such an association has the power to alter and amend its by-laws, provided that the new by-laws adopted are reasonable and not contrary to law; or are not inconsistent with its charter or the purpose and object of its creation, or do not deprive any member of his vested rights or impair the obligation of his contract of membership, and provided that the amendments are adopted in the mode legally prescribed. *Marshall on Private Corps.,* Sect. 330. But when it is a matter of determining whether a given by-law is reasonable or whether it interferes with a vested right, or whether it impairs the original contract of membership, there is difficulty in reconciling the decisions, and indeed, in some cases, they cannot be reconciled—a fact which courts have recognized and which Chief Justice Parker admits in *Parish v. N. Y. Produce Exchange,* 169 N. Y. 46, in distinguishing his holding from that of *Pain v. Societé St. Jean Baptiste,* 172 Mass. 319.

The question involved in the principal case, as stated by the Court of Appeals, is, how far does the reservation, by a mutual benefit association, of a general power to amend its by-laws, without specifying in what respects, authorize it to amend them in all particulars. Or in other words, it asks, can such an association amend a specific clause under a general power?

That this is an important question in view of the vast number of such certificates being issued by the numerous benefit orders, no one can deny. And the fact that the great majority contain the general reservation clause in very often exactly the same wording as in the principal case, adds even more to its seriousness.

The decision of the New York court that the general power is not sufficient, is not out of harmony with its previous holdings, although, as the Supreme Court judge who first tried this case, remarked: "A careful reading will show that none of the New York cases go quite to the length of holding that a member of a fraternal benefit association has a vested right in having his charges remain at a certain rate when it is necessary that the assessments be increased in order that the association be kept alive."

The early leading case is *Kent v. Quicksilver Mining Co.*, 78 N. Y. 159, decided in 1879, in which that court held that even though a power to alter and amend had been reserved by its charter, a corporation could not repeal a by-law so as to impair rights which had been given and become vested by virtue of it. As in the principal case, that court has held, through a considerable line of decisions, that such alterations of the original terms are not reasonable because they disturb vested rights; that the contract consists only of the application, certificate and by-laws in force at the time the certificate is issued, and that it could not be within the contemplation of the parties, in making the contract, at least in the absence of stipulations clearly specifying the subjects to be affected, that one party should have the right to make changes and thus have the other party completely at his mercy. Nothing less than an explicit statement in the certificate itself that the payments therein specified would be subject to modifications that would reduce the pecuniary value of the agreement to the member, would operate as a defense for the association against the charge of impairment of the contract obligations. *Beach v. Supreme Tent of K. of T. W.*, 177 N. Y. 100; *Ayres v. Ancient Order of United Workmen*, 188 N. Y. 280; *Englehardt v. Fifth Ward R. D. and Loan Association*, 148 N. Y. 281; *Weiber v. Equitable Aid Union*, 92 Hun. 277. Reasonable amendment is limited to matters regulating the administration of the order and its membership which do not destroy contract rights. *Weber v. Sup. T. of K. of T. M.*, 172 N. Y. 490.

The English rule is clearly opposed to the doctrine of the principal case. In *Smith v. Galloway* (1898), 1 Q. B. 71, where a subsequent amendment affected a reduction of sick benefits to the plaintiff member, the court held that such benefits were not in the nature of a vested right to a fixed sum and where the original contract had provided for an alteration of the by-laws by a general power given to the association, the member was bound by any amendment that might subsequently be made, "whatever the extent of that alteration may be."

The United States Supreme Court has held to the same effect in *Korn v. Mutual Assurance Society*, 6 Cranch (U. S.) 192. This was a case where a mutual fire insurance company changed its by-laws so as to increase the assessments on certain policy holders under a reserved general power to amend. A very help-

ful view was introduced in this decision. The court called attention to the essential difference between a mutual and an ordinary insurance company. The members of the former stand in the peculiar situation of being party to both sides, insurer and insured, so that there is a twofold liability on each member. In this suggestion of the Supreme Court, there is the only key to reconciling many of the decisions which, rightly analyzed, really turn on the distinction between an attempted amendment of the by-laws affecting the promise to the certificate holder and an amendment affecting his duties as a member of the insuring association bound to fulfill his part in providing means to maintain the order on a sound business basis. *Reynolds v. Royal Arcanum,* 192 Mass. 150.

The New York courts have regarded this question from a standpoint of protecting the individual member's rights. As the Illinois court says in *Grand Legion of Ill. v. Beaty,* 224 Ill. 346: "Seldom, if ever, has the insured or his beneficiary the advantage of legal advice when the insured enters the contract. The terms being entirely those of the insurer's own choosing, the contract should be liberally construed in favor of the insured."

The ground upon which the opposite view is based, is well stated in *Sup. Lodge, K. of P. v. Knight,* 117 Ind. 489, where a change made for the welfare of the order under a reserved general power to amend, whereby the original benefits were decreased for the older men by the creation of new classes for the younger men, was held not to constitute such a breach of contract that any damages could be ascertained or given. If the change is made in good faith, and the motive which influences the change is an honest desire to promote the welfare of the society, and the members are all given an opportunity to avail themselves of the change, no actionable wrong is done the members or their beneficiaries. It is the duty of the society to protect the interests of the many, rather than the few. Persons who become members of such societies must take notice of this, and one person cannot therefore demand that the welfare of the order be sacrificed for his sole benefit. His right is not an unqualified vested right, but on the contrary, it is qualified and limited to a great degree. The contractual relation between the members is to be determined by a consideration of the entire body of rules governing the association and is not limited to those existing at

the time of a member becoming such. The only right which vests is the right to such sums as become due before the new by-law is adopted. *Bowie v. Grand Lodge,* 99 Cal. 392; *Lawson v. Hewell,* 118 Cal. 613; *Fugure v. Mutual Society of St. Joseph,* 46 Vt. 362; *Pain v. Societé of St. Jean Baptiste, supra.*

The Alabama courts strengthen this view. In the leading Alabama case, *Sup. Commandery, K. of Golden Rule v. Ainsworth,* 71 Ala. 436, that court says: "The mutuality of duty and equality of rights which is the fundamental principle of such organizations, cannot well be preserved if the members stipulating for benefits were not required to consent that they would be subject to future as well as existing by-laws. Time and necessity will develop a necessity for change in the by-laws, and if the consent were not required, there would be a class of members bound by the changed laws and a class exempt from their operation. And there is little room, if any, for the apprehension that advantage will be taken by the governing body, of the assent of the member to be bound and affected by subsequent laws, to impose upon him unjust burdens." This opinion was upheld by the United States Supreme Court in 1904, in *Wright v. Minn. Mut. Life Ins. Co.,* 193 U S. 657, where the rule is laid down that there is no vested right in a policy holder to have the original plan of insurance continued, nor is there any impairment of the obligations of any contract the member had with the association when the company changed from the assessment to the regular premium paying basis under a status permitting this change.

The conclusion from these citations is that the rule of the principal case, while in harmony with the New York rule, is not in accord with the weight of opinion or with what seems to be the wiser reasoning.